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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/023,548	12/17/2001	Arvind Halliyal	AF01120	5462

7590

06/06/2003

Thomas W. Adams
Renner, Otto, Boisselle, & Sklar, L.L.P.
19th Floor
1621 Euclid Avenue
Cleveland, OH 44115

EXAMINER

ART UNIT

PAPER NUMBER

DATE MAILED: 06/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Notification of Non-Compliance With 37 CFR 1.192(c)	Application N . 10/023,548	Applicant(s) HALLIYAL ET AL.	
	Examiner Erik Kielin	Art Unit 2813	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 25 April 2003 is defective for failure to comply with one or more provisions of 37 CFR 1.192(c). See MPEP § 1206.

To avoid dismissal of the appeal, applicant must file IN TRIPLICATE a complete new brief in compliance with 37 CFR 1.192 (c) within the longest of any of the following three **TIME PERIODS**: (1) **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer; (2) **TWO MONTHS** from the date of the notice of appeal; or (3) within the period for reply to the action from which this appeal was taken. **EXTENTIONS OF THESE TIME PERIODS MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 1.192(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, pending or cancelled, or does not identify the appealed claims (37 CFR 1.192(c)(3)).
3. ☒ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 1.192(c)(4)).
4. ☐ The brief does not contain a concise explanation of the claimed invention, referring to the specification by page and line number and to the drawing, if any, by reference characters (37 CFR 1.192(c)(5)).
5. ☒ The brief does not contain a concise statement of the issues presented for review (37 CFR 1.192(c)(6)).
6. ☐ A single ground of rejection has been applied to two or more claims in this application, and
 - (a) ☐ the brief omits the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet presents arguments in support thereof in the argument section of the brief.
 - (b) ☐ the brief includes the statement required by 37 CFR 1.192(c) (7) that one or more claims do not stand or fall together, yet does not present arguments in support thereof in the argument section of the brief.
7. ☐ The brief does not present an argument under a separate heading for each issue on appeal (37 CFR 1.192(c)(8)).
8. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 1.192(c)(9)).
9. ☒ Other (including any explanation in support of the above items):

See attached sheet.

**ERIK KIELIN
PATENT EXAMINER**



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Regarding item 3, Appellant refers to two amendments after find and does not indicate their status, nor does Appellant indicate to which of the submitted amendments Appellant is referring. (See also MPEP 1207.)

Regarding item 5, while Examiner acknowledges that there exists a statement of the issues; however, the statement is not concise for the following reasons:

MPEP 1206 states, regarding the statement of the issues,

“(6) Issues. A concise statement of the issues presented for review. Each stated issue should correspond to a separate **ground of rejection** which appellant wishes the Board of Patent Appeals and Interferences to review. While the statement of the issues must be concise, it should not be so concise as to omit the basis of each issue. For example, the statement of an issue as ‘Whether claims 1 and 2 are unpatentable’ would not comply with 37 CFR 1.192(c)(6). Rather, the basis of the alleged unpatentability would have to be stated, e.g., ‘Whether claims 1 and 2 are unpatentable under 35 U.S.C. 103 over Smith in view of Jones,’ or ‘Whether claims 1 and 2 are unpatentable under 35 U.S.C. 112, first paragraph, as being based on a nonenabling disclosure.’ **The statement would be limited to the issues presented, and should not include any argument concerning the merits of those issues.**” (Emphasis added.)

First, the statements of issues A through D are not concise because they do not address the statute over which the claims are rejected and/or the claims at issue.

Second, Appellant’s brief presents issues B and C relating to non-elected, withdrawn claims 2-4 and 14-21. This issue relates to petitionable subject matter under 37 CFR 1.181 and not to appealable subject matter because the claims were restricted and have not been considered. (See MPEP § 1002 and § 1201 --especially § 1201 regarding petition of restriction requirement and the time required for petition.) Because claims 2-4 and 14-21 have not be considered as to the merits, they are not appealable; therefore, issues B and C are not concise having included withdrawn, non-elected claims.

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Third, issue D presents argument concerning the merits of the issue and further does not address the claims at issue or the statute involved.

Regarding item 9, the statement of the groupings of the claims is defective because the grouping includes non-elected, withdrawn claims 2-4 and 14-21.

Finally, Appellant is hereby notified,

MPEP 1206 states, in pertinent part,

“The question of whether a brief complies with the rule is a matter within the jurisdiction of the examiner...”

“Under 37 CFR 1.192(d), the appellant may file an amended brief to correct any deficiencies in the original brief. Moreover, if appellant disagrees with the examiner’s holding of noncompliance, a petition under 37 CFR 1.181 may be filed.”

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Erik Kielin whose telephone number is 703-306-5980. The examiner can normally be reached on 9:00 - 19:30 on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Carl Whitehead, Jr., can be reached at 703-308-4940. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9318 for regular communications and 703-872-9319 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

Erik Kielin
June 5, 2003